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The Development of Legal Systems of Central Asian States

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Résumé: Cet article est consacré à l'évolution et l'état actuel du système juridique des pays d'Asie centrale. Historiquement, le système juridique de l'Asie Centrale reflétait les traditions juridiques nationales et islamiques. Après l'établissement du régime soviétique, il est devenu laïque ayant des éléments constitués de la famille romano-germanique. Mais ce système juridique se fondait sur le régime totalitaire à cette époque où les droits de l'homme, de la liberté, de propriété, de la libre circulation et d'autres droits fondamentaux ont été absolument limités et interdits. Après l'effondrement de l'Union Soviétique et la déclaration de l'indépendance des États d'Asie Centrale, le système juridique de l'Asie Centrale a été transformé en système juridique moderne basé sur l'économie de marché. Les auteurs des articles donnent un aperçu des particularités du développement juridique du système de l'Asie Centrale.

Mots-clés: système juridique, droit constitutionnel, traditions islamiques, Code civil, Code pénal, règles de procédure, implémentation des normes internationales, hiérarchie des normes, droits de propriété, décrets, résolutions, ordonnances.

Introduction.

The legal systems of the states of Central Asia can be defined as transnational, transforming from a socialist to purely Romano-Germanic type based on market economy orientation. And at the same time, they can display certain traits that reflect the national and common-Islamic legal traditions. These peculiarities remained today as a result of the soviet regime lasted up to more than seventy years. Life style and mentality, customs and national traditions of each nation considerably affect the processes of the evolution and development of the national legal system. Despite the impact of various aspects on the process of development of the legal system of each Central Asian state, there are a lot of peculiarities common to all of these states which have a considerable effect on the process of development of national legal systems. First of all, it was noticeable when all of these states confronted the same difficulties and challenges during the creation of legal framework of economic and social relations. The main task was the establishment of constitutional state and to create the legal basis of the state-building, including the formation of the new institutes of public administration. So the first package of laws adopted in all states of Central Asia was oriented to the establishment of the institutional mechanisms of good governance. The next package of laws was aimed to create the national legislation to regulate economic relations and business activity. The last group of laws was to provide the civil and political rights and establishment of the social protection system.

Second and mostly important, legal reforms in Central Asian states and gradual development of legislation and integration of new-born states into global system required to learn foreign legal experience with a view to make legal reforms effective and to reach the extensive renewal of national legislation. To this end, outstanding scholars and law-makers of Central Asia

started to investigate existing theoretical and practical experiences of advanced foreign countries reflecting on them taking into account local realities and dwelling upon them to extract policy related implication for Central Asia. All these learning activities led consequently to the development of comparative law in post-soviet area.

By all means development of a separate legal system should be defined not only the quantity of adopted laws, but the quality of the laws and their implementation. But it depends on the social-economic conditions and capacity of each state. And, therefore the response of the Central Asian states to the same challenges in developing the national legal systems cannot be unique. In spite of adopting the identical laws, the ways of implementing them distinguish from each other and eventually this may reflect on the whole legal system of the state.

1. General information.

Today, when talking about major legal systems in Central Asia, we refer here to the legal systems of five states: Uzbekistan, Kazakhstan, Turkmenistan, Kyrgyzstan and Tajikistan, all of them being former Soviet republics.

Although countries in the region have a common history and Islamic traditions, the local and national attributes began to highlight in their legal systems since after their independence in the early 1990s. Since, these countries have undergone a period of legal reforms and modernization of the whole legal system. Their main task has been to align their systems with the deep political and economic changes characterized by the transition of social and economic institutions from centrally planned to market ones.

In 1991 all of the five Central Asian States proclaimed their independence. Large-scale reforms aimed at establishing a legal framework for the strengthening of the sovereign national statehood, democratization and the transition to a socially oriented market economy have launched in the beginning of 1990s.

Uzbekistan is one of the first among the Central Asian states that adopted a new democratic Constitution, which enshrined the principle of ideological and political pluralism, separation of powers, the priority of individual rights and freedoms, diversity of ownership, the institution of constitutional control, and many other principles and institutions that make up the essence of the modern rule of law.

By the end of 1990s in terms of updating the legislation, Uzbekistan and Kazakhstan were far ahead of other Central Asian republics, to complete the adoption of the full package of post-Soviet codes: Criminal Code (Uzbekistan –1994, Kazakhstan – 1997), Code of Criminal Procedure (Uzbekistan – 1994, Kazakhstan – 1997), Civil Code (Uzbekistan – 1996, Kazakhstan – 1994-1999), Code of Civil Procedure (Uzbekistan – 1997, Kazakhstan – 1999) etc.

The new legal systems of Central Asian states are based on a strictly secular basis, guided by the Roman-Germanic traditions and internationally recognized principles, norms and standards, including in the field of human rights. At the same time, the new legislation of these states as a whole retains the structure, system and legal technique, developed during the Soviet era and is largely common to the legal space of the Commonwealth of Independent States (CIS). Almost all of the codes of Central Asian states are not fundamentally different from the new codes of Russian Federation.

2. The hierarchy of legal acts.

The law is the main legal source in Central Asian states. The hierarchy of sources of law in all of five states is defined by the Laws "On normative legal acts", adopted in different periods of time. Along with the similarities of the laws, there can be observed some distinctions in defining the hierarchy of legal acts.

The Article 5 of the Law of Uzbekistan "On normative legal acts", which was adopted in new edition on December 24, 2012, gives a strict hierarchy of legal acts: the Constitution, laws of the Republic of Uzbekistan, resolutions of the Chambers of the Oliy Majlis (the Parliament), decrees, resolutions and ordinances of the President, resolutions of the Cabinet of Ministers, orders and regulations of ministries, state committees and departments, decisions issued by the local government¹.

The Law of Kazakhstan "On normative legal acts" was adopted on March 24, 1998. As in the Law of Uzbekistan, the Constitution occupies the highest position in the hierarchy of the legal acts in this law. One of the peculiar properties of the hierarchy of the legal acts determined by this law is the division of the presidential decrees into three types. These are presidential decrees having the force of Constitutional law, presidential decrees having the force of law and other legal decrees of the president².

The hierarchy of the legal acts in Turkmenistan is determined by the Law "On normative legal acts", adopted in new edition on December 7, 2005. The Constitution of Turkmenistan has the highest position in this hierarchy and it is followed by the constitutional laws, ordinary laws, resolutions of the Khalk Maslahati (the Parliament), resolutions of the Chairman of the Khalk Maslahati, decrees and resolutions of the President, resolutions of Cabinet of Ministers, acts of ministries and other central bodies of state administration, regulations and decisions of local authorities³. One of the resemblances in the laws of Turkmenistan and Kazakhstan is inclusion of the constitutional laws into the hierarchy as one of the major sources of law. Generally, laws amending the Constitution, referred to as "constitutional" and they have priority over other laws. Constitutional laws are not mentioned in the Law of Uzbekistan "On normative legal acts"; however they had been included as a part of the hierarchy in the old edition of the same law which was adopted in 2000. Another distinctive feature of the legal system of Turkmenistan is the institution of delegated legislation. According to Article 64 of the Constitution of Turkmenistan, Parliament may give the President the right to issue laws (with the subsequent approval of the Majlis-parliament)⁴. This feature does not apply to laws on adoption and amendment of the Constitution, criminal and administrative law, legal proceedings.

¹ Закон Республики Узбекистан «О нормативно-правовых актах» // Народное слово. 2012. 25 декабря. № 250 (5640).

² Закон Республики Казахстан «О нормативно-правовых актах» [Electronic resource] // Законодательство Казахстана. on-line. URL: <http://www.pavlodar.com/zakon/?dok=00121> (Retrieved 2013-08-30).

³ Закон Туркменистана «О нормативно-правовых актах» (новая редакция) [Electronic resource] // Законодательство Туркменистана. URL: http://www.tm.spinform.ru/main_law.html (Retrieved 2013-08-30).

⁴ Конституция Туркменистана [Electronic resource] // Законодательство стран СНГ. URL: http://www.base.spinform.ru/show_doc.fwx?rgn=2376 (Retrieved 2013-08-30).

Hierarchy of legal acts in the legal system of Kyrgyzstan is virtually identical to the hierarchy of the legal acts of Uzbekistan. And it is determined in the article 4 of the Law of Kyrgyzstan "On normative legal acts" which was adopted on July 20, 2009¹.

A distinct approach can be seen in the Law of Tajikistan "On normative legal acts" about the hierarchy of the sources of law. Unlike the other Central Asian states, Tajikistan proclaimed as a part of its legal system not only the international treaties, but also "international legal documents" that are recognized by Tajikistan as a whole. In case the republican laws do not stipulate to the recognized international legal documents, the rules of the international documents shall apply (Article 10)². Article 7 of the Law of Tajikistan "On normative legal acts", adopted on March 26, 2009 in new edition defines the international legal acts as a part of the hierarchy of the sources of law in Tajikistan. Furthermore, this article includes laws adopted by referendum as a part the legal system of Tajikistan³.

3. Civil law.

As in Russia, the civil law of the Central Asian states underwent a transformation in accordance with the principles of market economy and the Roman-Germanic civil traditions in the 1990s. The system of private law in Central Asian states almost entirely corresponds to the practices in Russia and most other CIS countries. Family and Labor Law allocated from the classic civil law as independent branches, by contrast while the business relations are regulated on the basis of a uniform civil codification.

Uzbekistan became the first Central Asian state and fully accepted the new Civil Code. The first part of the Civil Code of Uzbekistan was approved on December 21, 1995, the second on August 29, 1996, and in general the Civil Code of Uzbekistan entered into force on January 1, 1997. The new Code, replaced Civil Code of 1963, and based on a Model Civil Code, recommended to adoption by the CIS Inter-Parliamentary Assembly. It regulates the entire spectrum of property relations, including the rules of business relations.

The first part contains 3 sections: Section I "General Provisions" (the main provisions of persons, objects of civil rights, trade and representation, terms, statute of limitations); Section II "Right of ownership and other rights to thing"; Section III "Obligations" (general provisions on obligations, the general provisions of the contract). The second part of the Civil Code includes Section III (individual types of obligations); Section IV "Intellectual Property"; Section V "Inheritance Law"; Section VI "Application of rules of private international law to civil law relations".

The Structure of the Civil Code of Kazakhstan is almost identical to the structure of the new Civil Code of Uzbekistan and it also consists of two parts. The first part was adopted on December 27, 1994 and entered into force on March 1, 1995, Part II entered into force on July 1, 1999.

¹ Закон Кыргызской Республики «О нормативно-правовых актах Республики Кыргызстан» (новая редакция) [Electronic resource] // Законодательство стран СНГ. URL: http://base.spininform.ru/show_doc.fwx?rgn=28680 (Retrieved 2013-08-30).

² *Constitution of the Republic of Tajikistan* [Electronic resource] // WIPO (World Intellectual Organization) Resources. URL: <http://www.wipo.int/wipolex/en/details.jsp?id=10268> (Retrieved 2013-08-30).

³ Закон Республики Таджикистан «О нормативно-правовых актах» (новая редакция) [Electronic resource] // Законодательство Таджикистана. URL: http://tj.spininform.ru/main_law.html (Retrieved 2013-08-30).

As the above mentioned two codes, the Civil Code of the Kyrgyz Republic also consists of two parts. The first part of it was adopted on May 8, 1996. Part two was adopted on January 5, 1998. Since the introduction of both parts many of changes and additions have been made. The structure of the Code is also very identical to the structure of the codes of Kazakhstan and Uzbekistan as the basis of these Codes laid Model Civil Code, approved by the Inter-parliamentary Assembly of the CIS Member States. Because of this fact there is a high degree of similarity among the civil codes of these three states of Central Asia, with identical structure.

The Civil Code of Turkmenistan was adopted on July 17, 1998, and it entered into force on March 1, 1999. It replaced the Civil Code of the Turkmen Soviet Republic of 1963. One of the distinguishing feature of this Code from other codes of neighboring states is its structure, however it doesn't strongly highlight in the content. At the same time it also bears the stamp of the influence of continental European codes, especially the German Civil Code because of the participation of German specialists in preparation of the Turkmen Civil Code. It consists of five parts. Another distinctive feature is the Code doesn't include the rules of private international law.

The Civil Code of Turkmenistan was adopted later than the codes of other four states of Central Asia. Despite the structural difference as the Code consists of three parts, it retains the high degree of similarities with the same codes of neighboring countries.

As well as in other Central Asian states, the civil law of Tajikistan underwent a transformation in accordance with the principles of market economy and the Roman-Germanic civil traditions in the 1990s but this process has been completed only by 2005. The first part of the Civil Code, which was adopted on June 30, 1999, came into force on January 1, 2000. The second part of the Code was also adopted in the same year on December 11. At the same time the Civil Code of Tajik Soviet Republic of 1963 was still valid in the spheres which are not replaced by the new Civil Code of 1999. At last on February 11, 2005, the Milli Majlis (Parliament) of Tajikistan adopted the third part of the Civil Code and it came into force on March 1, 2005.

Almost all of the civil codes except the Civil Code of Turkmenistan determine the two forms of property: private and public (state property). According to Article 167 of the Civil Code of Uzbekistan, property in Uzbekistan is in the form of private and public. The subjects of property rights are citizens, legal persons and the State. Public property is defined by the Civil Code as a state and a member of the republican property and the property of the administrative-territorial units (municipal property). Other real (proprietary) rights are the right of economic management and the right of operational management, the right of lifetime inheritable possession of land, the right of permanent ownership and use of land, easements¹. In accordance with Article 53 of the Constitution of Uzbekistan "the economy of Uzbekistan, evolving towards market relations is based on various forms of ownership"².

Private property in the Civil Code of Kazakhstan is recognized as the property of citizens and of non-state-owned legal entities and their associations. State property is recognized in the form of the Republic's property and communal property. To the real (proprietary) rights along with

¹ Articles 165, 168 and 213 of the Civil Code of the Republic of Uzbekistan [Electronic resource] // Legal information system of Pravo. URL: http://www.lex.uz/Pages/GetAct.aspx?lact_id=111181 (Retrieved 2013-08-31).

² Constitution of the Republic of Uzbekistan [Electronic resource] // Legal information system of Pravo. URL: <http://www.pravo.uz/english/resources/doc/constitution.php3> (Retrieved 2013-08-31).

the right of property include: 1) the right of land use, 2) the right of economic management, 3) the right of operational management, and 4) other property rights¹.

As mentioned above, the Civil Code of Turkmenistan does not mention the forms of property. Furthermore, certain types of obligations are allocated in the Code, such as the rent of agricultural land and tourism services.²

The peculiarity of the Turkmen Civil Code is that it contains almost no rules on entrepreneurial entities. The corresponding relations are regulated by a separate law. At the same time, the Civil Code expressly states that its rules apply to the business relations. Thus, we are not talking about the division of Private Law of Turkmenistan on civil and commercial, as is common in most countries of continental Europe.

In 1990s, Central Asian states, as well as other former Soviet republics, adopted extensive legislation creating the legal framework for business activities, including the laws "On entrepreneurship in the Republic of Uzbekistan" dated February 15, 1991 (repealed on April 29, 1999), "On enterprises in the Republic of Uzbekistan" dated on February 15, 1991 (repealed on January 20, 2001), "On basic principles (bases) of foreign economic activity of the Kazakh SSR", dated December 15, 1990 (repealed on April 8, 1993), the Law of Kazakhstan "On Foreign Investments" on December 27, 1994 (repealed on January 22, 2003), the Law of Turkmenistan "On Entrepreneurship" on November 12, 1991 (amended), "On investment activity in Turkmenistan" dated May 19, 1992 (amended), "On Foreign Investments in the Kyrgyz Republic", dated September 24, 1997 (repealed on March 27, 2003), "On Foreign Investments in the Republic of Tajikistan" dated March 10, 1992 (repealed on May 12, 2007) etc. Most of these laws have been repealed and fully updated by the end of 2010s.

The relationship of intellectual property rights in Central Asian states, along with the civil codes is regulated by separate legal acts, including the Law of Uzbekistan "On the Legal Protection of Computer Programs and Databases" dated May 6, 1994, (amended in 2011), the Law of Kazakhstan "On Copyright and Related Rights" dated June 10, 1996 (amended in 2012), the Law of Turkmenistan "On the Scientific Intellectual Property" dated September 30, 1992 etc.

Land relations in Central Asian states are mainly regulated by the Land Codes. But there are different approaches with respect to the ownership and land use in the content of these codes. For instance, according to the Article 16 of the Land Code of the Republic of Uzbekistan, adopted on July 1, 1998: "Land is the property of state and the basis for national wealth, it ought to be used rationally, protected by the state and it is not liable to sale, exchange, give as a present, mortgage with the exception of cases established by the legislative acts of the Republic of Uzbekistan"³. Article 3 of the Land Code of the Republic of Kazakhstan, adopted on June 20, 2003, states that,

¹ Articles 191,192 and 195 of the Civil Code of Kazakhstan [Electronic resource]// Legal Information System of normative legal acts of the Republic of Kazakhstan. URL: <http://adilet.zan.kz/eng/docs/K940001000> (Retrieved 2013-08-31).

² Sections 6 and 11 of the Turkmenistan Civil Code of Saparmurat Turkmenbashi. Гражданский кодекс Туркменистана от 17 июля 1998 года № 294-I [Electronic resource] // ПАРАГРАФ – Информационные системы URL: http://online.zakon.kz/Document/?doc_id=31295232&sublink=6150000 (Retrieved 2013-08-31).

³ Land Code of the Republic of Uzbekistan [Electronic resource]. URL: http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&search_type=query&table=result&query=ID:LEX-FAOC070912&format_name=ERALL&lang=eng (Retrieved 2013-08-31).

“Land in the Republic of Kazakhstan is in the public domain. Plots can also be privately owned on terms, conditions and limits established by this Code”¹.

Family law survived as an independent branch in the legal systems of Central Asian states. It is regulated basically by the Family Code. Family Code of Uzbekistan was adopted on April 30, 1998. For the first time in the region, this Code maintained the institution of marriage contract. Family – the basic unit of society – is entitled to protection by the State. Marriage is based on the free consent and equality of the parties. Polygamy is punishable as a criminal offense. Parents are required to maintain and educate their children until they come of age².

Matters of marriage and family relations in Tajikistan are regulated by the Family Code of the Republic of Tajikistan, adopted on November 13, 1998. Besides the Code, the Constitution of Tajikistan also includes the principal rules regulating the family relations. According to the Article 33 of the Constitution, “The state shall protect the family as the basis of society. Everyone shall have the right to form a family. Men and women who have reached the age of marriage shall have the right freely to marry. In marriage and in divorce, husband and wife shall have equal rights. Polygamy shall be prohibited”³.

New edition of the Family Code of Turkmenistan was adopted on April 1, 2012. According to the Article 9 of this Code, “Protection of family rights is carried out by the court in accordance with civil proceedings of Turkmenistan, as in the cases provided by family legislation of Turkmenistan – governmental authorities, local government bodies, including the social welfare authorities”⁴. Moreover, Turkmenistan passed the Law “On State Guarantees of Women’s Equality” in 2007. Its Article 8 envisages that the spouses are equal in family relations. The law establishes the principle of equality in household work which shouldn’t be a means of discriminating against women and may be done equally by women and men⁵.

4. Criminal Law and Procedure.

After independence in 1991, along with other areas, reform of the judicial and legal systems has become a priority in public policy of the Central Asian states. From the early 1990s, all five independent republics began to develop their legislation on criminal law based on the generally recognized norms of international law.

The only source of criminal law today in Central Asian states is a Criminal Code. Uzbekistan is one of the first among the states of Central Asia to adopt its new Criminal Code in 1994. This Code is based on the Constitution and the generally recognized norms and principles of international law. It entered into force on January 1, 1995.

¹ Land Code of the Republic of Kazakhstan [Electronic resource]. URL: http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&search_type=query&table=result&query=ID:LEX-FAOC043145&format_name=ERALL&lang=eng (Retrieved 2013-08-31).

² Family Code of the Republic of Uzbekistan [Electronic resource]. URL: <http://cis-legislation.com/document.fwx?rgn=973> (Retrieved 2013-08-31).

³ Constitution (Basic Law) of the Republic of Tajikistan [Electronic resource]. URL: <http://www.president.tj/en/taxonomy/term/5/28> (Retrieved 2013-08-31).

⁴ Семейный кодекс Туркменистана [Electronic resource]. URL: <http://www.turkmenistan.gov.tm/?id=779> (Retrieved 2013-08-31).

⁵ Work and family relations in Turkmenistan [Electronic open resource]. URL: http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/turkm_en.pdf (Retrieved 2013-08-31).

Criminal Code of 1994, as a whole is similar to the criminal codes of other countries of the CIS. Its main peculiarity is the presence of the section containing the definitions of legal terms. Article 15 of the Criminal Code of the Republic of Uzbekistan gives the classification of crimes: with insignificant social danger; less serious; serious; especially serious. The system of penalties includes: a fine, deprivation of certain rights, correctional labor, suspension from office, arrest, committing to a disciplinary unit, imprisonment, and life imprisonment¹.

Uzbekistan has become one of the first Central Asian states to abolish the death penalty in law and practice. The abolition, initiated by August 2005 decrees of the President of Uzbekistan, became effective on January 1, 2008. Capital punishment has been substituted by longer term deprivation of liberty and life sentencing.

Criminal proceedings are governed by the Code of Criminal Procedure of Uzbekistan, adopted on September 22, 1994. It reflects the whole idea of democratization of legal proceedings. Article 18 of the Code states that, "No one may be taken into custody except under a court decision"². After the adoption of the law "On amendments and additions to the Law of Uzbekistan "On Courts"" on July 11, 2007, the second part of the Article 18 of the Code of Criminal Procedure, which gives the prosecutor to issue arrest warrant was excluded. In 2008, Uzbekistan announced it had instituted *habeas corpus* reforms into domestic law, requiring judges to show cause for detention of prisoners rather than prosecutors holding them arbitrarily and *incommunicado*.

The criminal legislation of Kazakhstan, as well as other states of Central Asia, consists solely of the Criminal Code. The current Criminal Code of the Republic of Kazakhstan, adopted on July 16, 1997 (as amended), has replaced the Criminal Code of the Kazakh Soviet Socialist Republic of 1961. It has been designed according to the Model Code for the states-participants of the CIS.

Because of this, its concepts and content is very close to the Criminal Code of Russian Federation, adopted in 1996. This feature is common to all other Central Asian states also. Almost all codes are basically the same in structure. As well as all post-Soviet penal codes, the Criminal Codes of all five Central Asian states put on top the criminal-legal protection of the individual, not the state.

Criminal Code of Kazakhstan determines the identical classification of crimes with the Criminal Code of Uzbekistan. In accordance with the Article 10 of the Code, "crimes are subdivided depending on the nature of the offence and the degree of social danger, into crimes of lesser gravity, crimes of medium gravity, grave crimes, and especially grave crimes". Types of punishment determined in the Code are also similar with the punishments defined in the Criminal Code of Uzbekistan, except the only punishment of death penalty, still remaining in the Criminal Code of Kazakhstan. According to the Article 38 "one of the following basic sentences may be adjudged against a person who has committed a criminal offence: a fine, deprivation of the right to hold specific offices or to engage in specific activities, community service, corrective labor,

¹ Criminal Code of the Republic of Uzbekistan (English version) [Electronic resource] // LEGISLATIONLINE URL: <http://legislationline.org/documents/section/criminal-codes/country/55> (Retrieved 2013-08-31).

² Ўзбекистон Республикаси жиноят процессуал кодекси [Electronic resource] // Ўзбекистон Республикаси қонун ҳужжатлари маълумотлари миллий базаси – Lex.uz – online URL: http://www.lex.uz/Pages/GetAct.aspx?lact_id=111460 (Retrieved 2013-08-31).

restriction in military service, restriction of liberty, detention in a guard-house, deprivation of liberty, death penalty”¹.

Criminal proceedings in Kazakhstan are regulated by the Code of Criminal Procedure, adopted on December 13, 1997, which replaced the Code of Criminal Procedure of the Kazakh Soviet Republic of 1959. The last amendments to this Code were made on February 19, 2002, by the Law of the Republic of Kazakhstan “On introduction of amendments and additions to some legislative acts of the Republic of Kazakhstan on combating terrorism”².

The current edition of Criminal Code of Turkmenistan was adopted on May 10, 2010, replacing the Criminal Code of 1997, which had entered into force on January 1, 1998. In many articles of the Code there were made major changes associated with the reduction of sentences to persons who have committed criminal offenses, replacing harsh punishment for more humane ones, such as a fine. In particular, the criminal law has the task of protecting individual rights and freedoms of citizens and the interests of society and the state, property, public order, independence and constitutional order and the neutrality of Turkmenistan, the peace and security of mankind against crime and crime prevention.

Classification of crimes and types of punishment in the Criminal Code of Turkmenistan is almost the same with the Criminal Code of Uzbekistan³.

In January 1999, President of Turkmenistan signed a decree declaring a moratorium on executions and death penalties, and the President publicly announced the pardon “of all 674 prisoners sentenced to death for the previous year”. Thus, Turkmenistan became the first country in Central Asia, abolished the death penalty⁴.

The new Code of Criminal Procedure of Turkmenistan adopted by the national parliament, the Mejlis of Turkmenistan, on April 18, 2009 in accordance with international standards in the administration of criminal justice reflected the rule prohibiting the manufacture of a criminal case decisions and actions that humiliate or diminish the dignity of a person involved in a criminal trial.

The Criminal Code of the Kyrgyz Republic was adopted on October 10, 1997 (as amended on June 11, 2003). It replaced the Criminal Code of the Kyrgyz Soviet Republic, adopted on December 29, 1960. It has been prepared on the basis of the Model Penal Code for the states-participants of the CIS. So the Criminal Code of Kyrgyzstan in its concept and content is very close to the criminal codes of other Central Asian states.

The main types of punishments under the Criminal Code of 1997 are: community service, a penalty, triple Ayyp, deprivation of the right to occupy certain positions or engage in certain activities, public apology with compensation for damages, correctional work, the restriction of

¹ Criminal Code of the Republic of Kazakhstan (English version) [Electronic resource] // Информационно-правовая система нормативных правовых актов Республики Казахстан URL: http://adilet.zan.kz/eng/docs/K970000167_ (Retrieved 2013-08-31).

² Закон Республики Казахстан от 19 февраля 2002 года № 295-ІІ “О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам борьбы с терроризмом [Electronic resource] // ПАРАГРАФ – Информационные системы URL: http://online.zakon.kz/Document/?doc_id=1029089&sublink=20000 (Retrieved 2013-08-31).

³ Articles 11 and 44 of the Criminal Code of Turkmenistan [Electronic resource] // Уголовный кодекс Туркменистана URL: <http://www.parahat.info/law/2010-05-20-ugolovnyy-kodeks-turkmenistana> (Retrieved 2013-08-31).

⁴ Назарова Ф. На пути к отмене к смертной казни – опыт СНГ и Европейского Союза. Общественный Фонд “Нота Бене” – Душанбе: 2010. С. 14.

liberty, in a disciplinary military unit, deprivation of liberty, life imprisonment¹. The main distinguishing feature of the Criminal Code of Kyrgyzstan is including a triple Ayip as a type of punishment, which cannot be observed in any other criminal codes of the Central Asian states. Triple Ayip is a penalty imposed by the court, three times the amount of damages in cash or in kind. In this case, the two pieces are collected in favor of the victim, and the third – to the state.

Death penalty is abolished by the Law and the Constitution of Kyrgyzstan in 2007. Article 21 of the Constitution of the Republic of Kyrgyzstan, adopted on June 27, 2010 states that “everyone shall have an inalienable right to life. No one may be arbitrarily deprived of life. Death penalty is prohibited”². On June 25, 2007, the President of Kyrgyz Republic signed the law, introducing amendments and additions to the Criminal Code of Kyrgyz Republic and other laws, replacing the death penalty with life imprisonment³.

Criminal proceedings governed by the Code of Criminal Procedure of Kyrgyz Republic, adopted on June 30, 1999, and entered into force on July 21, 1999, and it replaced the Code of Criminal Procedure of Kyrgyz Soviet Republic, adopted on December 29, 1960. The Code of Criminal Procedure of Kyrgyz Republic, despite entering into it a large number of additions and changes (about 32), remained a self-contradictory and largely formalized.

The norms of the new Constitution in the field of criminal procedure are reflected in Section 2, which is called the rights and freedoms of human and citizen. Peculiarity of the new provisions is that they are reflected in the new Constitution as a separate article, while they had been located only in two articles of all previous constitutions. Pursuant to paragraph 3 of Article 24 of the Constitution “no one may be arrested, kept in custody or be deprived of freedom except by court decision and solely on the basis of and in accordance with the procedures established by the law”⁴. According to the Code of Criminal Procedure powers of the prosecutor to give consent for the investigator to the courts the request for remand in custody contradicts the above-mentioned provision of the new Constitution, as the Constitution may not be restricted by any law, and it distributed without restrictions on legal arise in the criminal law⁵.

The current Criminal Code of the Republic of Tajikistan was adopted on May 21, 1998, and entered into force on September 1, 1998, replacing the Criminal Code of the Tajik Soviet Socialist Republic of 1961. As the same codes of other Central Asian Republics, it has been prepared on the basis of a model of the Penal Code for the states-participants of the CIS. According to the Article 1 of the Criminal Code is the only criminal law in the country and is based on the Constitution and the generally recognized principles and norms of international law. The last amendments to this

¹ Article 42 of the Criminal Code of the Kyrgyz Republic [Electronic resource] // Уголовный кодекс Кыргызской Республики от 1 октября 1997 года № 68 (с изменениями и дополнениями по состоянию на 03.08.2013г.) URL: http://online.adviser.kg/Document/?link_id=1000871465 (Retrieved 2013-08-31).

² Constitution of the Kyrgyz republic (English version) [Electronic resource] // WIPO – World Intellectual Property Organization Resources. URL: http://www.wipo.int/wipolex/en/text.jsp?file_id=254747 (Retrieved 2013-08-31).

³ Закон Кыргызской Республики от 25 июня 2007 года № 91 «О внесении изменений и дополнений в Уголовный кодекс Кыргызской Республики» [Electronic resource] // ПАРАГРАФ – Информационные системы URL: http://online.adviser.kg/Document/?link_id=1001310113 (Retrieved 2013-08-31).

⁴ Paragraph 3 of Article 24 of the Constitution of Kyrgyz Republic.

⁵ Paragraph 17 of Article 34 of the Code of Criminal Procedure of Kyrgyz Republic.

Code were made on July 3, 2012, by the Law of the Republic of Tajikistan "On introduction of amendments and additions to the Criminal Code of the Republic of Tajikistan"¹.

Types of punishments are determined in the Article 47 of the Code. Along with the Republic of Kazakhstan, Tajikistan is one of the Central Asian states retaining the death penalty as a type of punishment².

The Criminal Code of Tajikistan contains a number of offenses, which are unknown to the criminal codes of other Central Asian states, including the giving in marriage a girl who has not reached the age of consent (Article 168), contracting a marriage in relation to a person who hasn't reached the age of consent (Article 169), polygamy (Article 170). These compositions reflect the specific socio-cultural conditions in Tajikistan, where there are still remnants of patriarchal life. Other features: "the recruitment of people for exploitation", "deliberate violation of international humanitarian law committed during the armed conflict" and "war of aggression" appear as a separate crime.

Since the ratification of the International Covenant on Civil and Political Rights in 1999, the urgent question was to reform the criminal justice system. In recent years, the Code of Criminal Procedure of Tajikistan Soviet Republic of 1961 fell under a lot of changes and additions. However, this was not enough; there was a need for a new Code of Criminal Procedure. Over the past 15 years, three versions of the bill have been prepared by several working groups established to draft the Code of Criminal Procedure.

On June 23, 2007, the President of the Republic of Tajikistan signed a decree "On the program of judicial reform in Tajikistan". The main objective of the program was to strengthen the judicial system, increasing the role of the court to protect the rights, freedoms and legitimate interests of citizens, providing guarantees of judicial protection, strengthening the requirements for judicial staff to enhance their knowledge, experience and responsibility. The program included a series of new laws, including the development of a new version of the Code of Criminal Procedure. Finally, in December 2009, after undergoing extensive discussion among members of the legal profession and civil society, the Code of Criminal Procedure of the Republic of Tajikistan was adopted.

Conclusion.

Modern legal systems of Central Asian states can be confidently affirmed as a part of the Roman legal system. Firstly, almost all spheres of the legal systems of Central Asian states are codified and the law is a main legal source for all of them. Secondly, legal systems of all Central Asian states are strictly based on the hierarchy of the sources of law and the Constitution of each state occupies the highest place in this hierarchy.

Despite the similarities between the legal systems of Central Asian and European states there are some distinctive features. As was suggested in the introduction, the legal system of each state of Central Asia distinguishes from each other in accordance with their approach and understanding of the concept of law formed during the period of independence. Yet, we can do

¹ Закон Республики Таджикистан от 3 июля 2012 года № 844 «О внесении изменений и дополнений в Уголовный кодекс Республики Таджикистан» [Electronic resource] // Законодательство стран СНГ URL: http://base.spininform.ru/show_doc.fwx?rgn=53445 (Retrieved 2013-08-31).

² Уголовный кодекс Республики Таджикистан [Electronic resource] // Национальный Центр при Президенте РТ. URL: <http://mmk.tj/ru/legislation/legislation-base/codecs/> (Retrieved 2013-08-31).

some conclusions about the development of the legal system of each state of Central Asia separately and common aspects to the legal systems of all Central Asian states as a whole. Taking into account the specific peculiarities of the legal system of each state of Central Asia, we can make the conclusion that the development process of the legal system of a separate state can be affected by political, social, economic and other factors.

Political factors contain the desire and aspiration of the state authorities to improve and develop the legal system. In other words, the high degree of democratization of the society helps to ensure the effective work and implementation of legal acts.

Social factors affecting the process of development of the legal system include influence of the personality, attitude and lifestyle of the people living in a given country. The legal behavior of population, average age, religion, ethnicity, family, economic status and education of people are also defined as social factors. Eventually, social changes in the lifestyle and attitudes of population may reflect in the implementation of a proper legal act. Therefore those types of legal acts effectively working in the legal systems of Tajikistan or Turkmenistan may not give the same result in the legal system of Kazakhstan.

Leading economic factors influencing the development of legal system of a state include, first of all, the economic capacity of the state to provide the effectiveness of the law.

The effect of these factors to the development of legal systems is especially typical for the countries undergoing the transformation period and reforming the whole legal system. At the same time effectiveness of the legal system may influence the political, social and economic situation in the country. For instance, the quality of a state's judicial system is an important determinant of economic growth and vitality. The decisions made within state judicial systems affect the degree to which private property rights are well-defined and enforced, which is an essential building block for entrepreneurial activity and economic growth.

Thereby the degree of development of the legal systems among the Central Asian states is distinct from each other. Though each of these five states of Central Asia has chosen the own way of developing its legal system in accordance with the general principles and norms of international law, they all are transforming towards the Romano-Germanic law. At the same time, because of the resemblance in their methods of legislative drafting and other distinctive features they can be defined as a regional part of the Romano-Germanic legal family.

Finally, another leading factor which can affect the development of legal systems of Central Asian states is the implementation of international conventions, which can play a crucial role in the unification of various spheres of law. In an effort to give legal recognition to the norms of international acts, states follow different practices in implementing the norms of international conventions. Therefore, the use of similar experiences of foreign states in implementing international norms can serve to unify the legal systems of Central Asian states and at the same time be the impetus for the development of comparative law in these states.

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